IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 525 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHHOTALAL CHAKUBHAI

Versus

KALPNABEN MAHESHWAR BHATT

Appearance:

1. Criminal Appeal No. 525 of 1986

MR BB NAIK for Petitioner No. 1

MR JM PANCHAL for Respondent No. 1

MR JD AJMERA for Respondent No. 2

NOTICE SERVED for Respondent No. 3-4

MR HH PATEL, APP for Respondent No. 5

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/06/2001

ORAL JUDGEMENT

1. This appeal is directed against the order of

acquittal passed by the Learned Judicial Magistrate First Class, Jamnagar in Criminal Case No. 3197 of 1981 dated 27/3/1984. The respondents herein were charged with alleged commission of offence under Sections 304-A and 114 of the Indian Penal Code (IPC).

2. The case of the prosecution appears to be that complainant's daughter Manjulaben Jaynatkumar was admitted to the hospital on 13/10/1979 for performing the operation of caesarean. The complainant's son Rajnikant had given blood which was stored by the blood bank situated in the premises of the hospital. According to the prosecution the caesarean was performed by accused no. 2 Dr. Padmaben Jayantilal on 13/10/1979 some time in the afternoon. At the time of operation Manjulaben was required to transfuse blood and it is the prosecution case that though the blood of her brother Rajnikant matched with her blood, defective blood of one Noormahmad was given to her and the blood of Rajnikant was stored in the blood bank. As a result of this, according to the prosecution the patient developed complications and ultimately died after 6.00 p.m. on that very day.

3. It appears that the complainant initially tried to lodge the FIR with police, but he did not receive any cooperation from the police and hence he was compelled to approach the Learned Magistrate by filing necessary complaint. It also appears that the Learned Magistrate directed the concerned police to carry out the investigation into the matter by issuing order under Section 156(3) of the Criminal Procedure Code. It also appears that the police after investigation sought for 'C' summary by making necessary application before the Learned Magistrate. However, objections were filed by the complainant opposing the grant of 'C' summary to the police as prayed for. The Ld. Magistrate after hearing, thought it fit to issue process against the accused and he turned down the request of the police to grant 'C' summary. The accused upon summons, appeared before the Court. After completion of the initial necessary formalities, the Ld. Magistrate proceeded with the trial and at the end of the same acquitted all the accused of the offences with which they were charged.

4. Mr. B.B. Naik, learned advocate for the appellant - original complainant has taken me through the evidence. He has argued that considering the evidence the Ld. Magistrate has erred in acquitting the accused.

5. From the evidence led by the prosecution in support of its case, it appears that accused no. 1 - Dr.

Kalpanaben Maheshwar Bhatt has been impleaded in the present case, as she was discharging the duties of Assistant Professor, Irwin Hospital, where the deceased patient was admitted and though it was her duty to perform the caesarean, she did not do it and she did not even remain present at the time of caesarean carried out by original accused no.2 and thereby she had shown negligence. So far accused no. 2 is concerned, the allegation appears to be that though she was not a qualified medical officer to carry out the caesarean, she performed the caesarean of deceased Manjulaben and as a result thereof, she developed complications and ultimately died in the hospital. Against original accused no. 3, who at the relevant time was Houseman in the said hospital, it was alleged that though he promised to remain present at the time of the operation, he did not do so. So far accused no. 4 is concerned, prosecution has tried to allege that instead of the blood of Rajnikant i.e. brother of the deceased patient, defective blood of one Noormahmad was given to her and that also caused severe reaction.

6. For the purpose of establishing its case at the trial the prosecution examined in all 5 witnesses including the medical officer, who performed the post mortem of the deceased. P.W. No. 1 Chhotalal Chakubhai at Exh. 68 has deposed that his daughter Manjula was admitted in the Irwin Hospital and on the day on which he was admitted Dr. D.S. Mehta accused no. 3 examined her and opined that she would be required to give blood and, therefore, proper arrangement for suitable blood should be made. He also assured them that he would remain present, if necessary. This witness has further stated that blood of Manjula was examined and it was found to be of 'A' group. He has also stated that his son Rajnikant specifically told original accused no. 4 that Manjula should be given his blood. He has also stated in the evidence that the operation was performed by accused no.2 Padmaben, who at the relevant time was not qualified doctor, but she was only a medical student. He had however given consent for the operation. At the time of caesarean, according to this witness, only accused no.2, nurse and a peon were present and none else was present. At about 4.00 O'clock Padmaben came out and informed the complainant and others that baby boy was born to Manjula and the child was also brought out and shown to them. The witness has further stated that till 6.00 O'clock there was no news of Manjula and it was only thereafter she was brought out and taken to the ward, where it was noticed that her condition was very bad. According to this witness, the abdomen of the patient was swollen and

there was reaction all over the body. At that time accused no. 1 Dr. Kalpanaben arrived there and on examining the patient she observed that it was the blood which had created this problem. It is further stated by this witness that Manjula died before any more blood could be given to her. In his evidence he has also stated about the efforts made by him to lodge the FIR with the police and also about non-cooperative attitude of the police in the matter of investigation. In the cross-examination by the defence, this witness has admitted that accused no. 2 Padmaben was already M.B.B.S. and she was studying for M.D. It also appears from the cross-examination of this witness that the story regarding Rajnikantbhai having insisted for giving his blood to Majula, etc. is not very reliable.

The prosecution examined Rajnikant Chhotalal as P.W. No. 2 at Exh. 96. He was brother of Manjula and at the time of operation he has given his blood which according to him was not given to the deceased, but instead some one else's blood was given which caused reaction. However, from his cross-examination by the defence it clearly appears that he had never insisted upon his blood being given to the deceased. His evidence otherwise also does not lead the prosecution case any further except that he had given blood which was stored by the blood bank as a replacement for the blood supplied to Manjulaben.

Third witness Dinesh Chhotalal is examined at Exh. 120. His evidence is more or less on the line of the complainant and except the duplication of evidence, there is no reliable material coming forth from his evidence. Similarly the evidence of P.W. No. 4 also does not lead the case of the prosecution any further.

Lastly the prosecution has examined Dr. Satish Dinkar Kalele at Exh. 135. At relevant time he was working as Tutor in the M.P. Shah Medical College at Jamnagar. According to him on 14/10/1979 dead body of Manjulaben Chhotalal was brought to him for carrying out post mortem. Accordingly he had carried out the post mortem and prepared P.M. report, which has been brought on record at Exh.138. He has in his evidence in detail stated the signs noticed on the body of the deceased. In the opinion of this witness, the death of Manjula was caused because of loss of blood due to the internal hemorrhage in the abdominal cavity. This witness has clearly stated in his evidence that in his opinion no error was committed by the doctor in performing the operation. In the cross-examination this witness has

stated that if the patient is given blood of the group not matching with the patient's blood group, then there would be severe reaction on the kidney which was found to be absent in this case. The evidence of this witness establishes two very important facts, namely that there was no error committed by the doctor in performing the operation and secondly that the patient had not died of any reaction due to defective blood being given to her. The entire case of the prosecution is based on these two allegations. Since in the opinion of the expert, matter of truth was present in this case, it can be said that the prosecution could not be able to prose its case against the accused and hence the order of acquittal passed by the Ld. Magistrate can by no stretch of imagination be called erroneous.

7. Mr. J.M. Panchal, learned counsel appearing for the accused has submitted that if the reasons assigned by the trial Court in acquitting the accused are found to be cogent and reasonable, the appellate Court should not interfere with the same. I fully agree with the submission of Mr. Panchal. It is a well settled principle of law by now that while deciding the appeal against order of acquittal, the Court should normally be slow in disturbing the acquittal rendered. Since I am broadly in agreement with the reasons assigned by the Ld. Magistrate, I do not see any reason to interfere with the same. The appeal, therefore, deserves to be dismissed and it is hereby ordered to be dismissed.

[Akshay H. Mehta, J.]

* Pansala.